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FORCED LABOR, SLAVERY AND HUMAN TRAFFICKING: CORRELATION OF TERMS

UN Slavery Convention; UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; ILO Convention No. 29 and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children establish the demand to criminalize acts against which these international documents are directed, for countries ratified them. Also Conventions and Protocol call for international cooperation directed on abolition of forced labor, slavery and human trafficking.

But is it easy to carry out an effective internal policy and cooperate in international level when terms with which state needs to work and their correlation are still unclear?

There are at least three sources of conceptual confusion:

1) the ILO, which maintains that forced labor is the umbrella category for slavery, and human trafficking;

2) Bales and other researchers who argue that a 'new slavery' is the umbrella category for forced labor and human trafficking;

3) the U. S. government, which asserts that trafficking is the umbrella category for forced labor and slavery.

So it is necessary to define and delimit such terms as «forced labor», «slavery» and «human trafficking».

UN Slavery Convention (1926) defines slavery as «the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised». UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices

Similar to Slavery (1956) introduces such terms as «debt bondage», «serfdom» and also servile forms of marriage to complete the list of servile and analogous statuses of person due to the modern reality.

The definition of slavery given in the Convention has its interpretation in literature. For example, in research of Human Rights Education Associates, HREA (an international non-governmental organization that supports human rights learning) is pointed that «The 1926 Convention's definition of slavery was broadened to include forced or compulsory labor in 1930 in the ILO Convention (No. 29) concerning Forced or Compulsory Labor». Logically it means that HREA researchers are inclined to think that slavery includes forced labor.

Also it is obvious that statuses defined in Conventions are rather uncommon in civilized society and this is the reason for development of «modern slavery» conception. For example, Bales points that «the key characteristics of slavery are not about ownership but about how people are controlled», and thus considers each status in which persons can't control their life by themselves as slavery. It is clear that Bales also is inclined to think that the concept of slavery includes forced labor.

But it is necessary to emphasize that this understanding is not right. Firstly, the article 5 of UN Slavery Convention prescribes «The High Contracting Parties recognize that recourse to compulsory or forced labor may have grave consequences and undertake... to take all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery». Logically this article delimits discussed terms and points that forced labor in its worse forms can lead to «conditions analogous to slavery». Secondly, the European Court of Human Rights in case *Siliadin v France* affirmed the requirement of 'ownership' in slavery and rejected the view that ownership is not required. It declared unanimously that violence and even the lack of freedom are insufficient to constitute slavery. Legal ownership is required. This statement also confirms that forced labor can't be only considered as a part of slavery.

The definition of forced labor is given in ILO Convention No. 29: «all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily». This term is interpreted quite broadly by ILO. In particular, in report «Global alliance against forced labor», 2005 is introduced such a list of forms of lack of person's consent for work (or set of «ways» to getting into the situation of forced labor):

- 1) birth/descent into «slave» or bonded status;
- 2) physical abduction or kidnapping;
- 3) sale of person into the ownership of another;
- 4) physical confinement in the work location – in prison or in private detention;
- 5) psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance;
- 6) induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.);
- 7) deception or false promises about types and terms of work;
- 8) withholding and non-payment of wages;
- 9) retention of identity documents or other valuable personal possessions.

It is obviously that 1-st and 3-rd forms are typical not for forced labor but for slavery; 6-th form is typical for debt bondage. Thus it is clear that ILO considers that the term «forced labor» is more wide than slavery and it includes it.

This conception is not correct too because forced labor doesn't demand to exercise the right of ownership over the victim.

As for the correlation between discussed terms it's necessary to point that forced labor can exist as a one of aspects of slavery because traditionally all slaves are obliged to work, but slavery can have also other purposes, for example, sexual exploitation or getting profit from slave trade. Forced labor also can exist separately from slavery in cases when, for example, prisoners are obliged to work. Thereby it's possible to make a conclusion that these terms are closely connected but can not be covered by each other.

As for the term «human trafficking» it is given in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and it is as follows: «the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the

removal of organs». Accordingly to this definition human trafficking is considered as one of ways to getting into the situation of forced labor or slavery status. But it is not an exclusive way because person can become a slave if he (she) will be born in the family of slaves; and person can get into the forced labor situation in case of, for example, withholding of wage.

Graphically the correlation of these terms will be look like this:

1 – forced labor;

2 – slavery;

3 – human trafficking.

Summarizing the all mentioned above it is reasonable to stress that terms «forced labor», «slavery» and «human trafficking» are closely connected, interrelated, caused by each other (in cases when human trafficking precedes to the forced labor situation and slavery status), but can not be covered by each other.

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БОРОТЬБА З РАБОТОРГІВЛЕЮ В СУЧАСНОМУ МІЖНАРОДНОМУ ПРАВІ

Работоргівля існує вже не одну тисячу років. В давні часи вона складала помітну частину економіки держав, про що свідчать історичні факти. Рабовласницькими державами були Єгипет, Греція, Рим. Трансатлантична работоргівля, яка тривала з 16 по 19 століття, за оцінками ЮНЕСКО стала наймасовішим в історії людства насильницьким переміщенням людей на велику відстань – було вивезено близько 25 – 30 мільйонів осіб. Вона охоплювала території Африки, Північної та Південної Америки, Європи і полягала у продажу і експлуатації європейцями мільйонів африканців. До речі, Міжнародний день пам'яті жертв рабства та трансатлантичної работоргівлі відзначається щорічно 25 березня протягом кількох останніх років. Відповідна резолюція Генеральної асамблеї ООН вийшла 17 грудня 2007 року. В XIX столітті склалися передумови для проголошення рабства і работоргівлі злочином та їхньої заборони. Остання за часом заборона на володіння рабами і використання рабської праці була введена в Мавританії у 1980 році.